IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1016 OF 2004

IN

SUMMONS FOR JUDGMENT NO.1093 OF 2003

IN

SUMMARY SUIT NO.3884 OF 2001

Smt Sushila Chandrakant Mehta ... Plaintiff

v/s

M/s Tulsidas Valji and Co. and ors. ... Defendants

Mr K.P. Jain i/b Mr P.V. Shah for Plaintiff.

Defendant No.3 present in person, for Defendant No.2 also.

CORAM : D.K. DESHMUKH J.

DATE : 20TH DECEMBER 2004.

P.C. :-

1. This is a notice of motion taken out by the defendant Nos.2 and 3. Defendant No.3 is present in person. He says that he holds power of attorney on behalf of defendant No.2, who is his father. The defendant Nos.2 and 3 were appearing in person in summons for judgment No.1093 of 2003. The matter was listed on board. Though the defendant Nos.2 and 3 had filed reply, they did not remain present at the time of hearing. According to the defendant No.3, he was watching the board of the Court every day on internet, but on that particular day, because of failure of his computer he could not notice the board. He says that as he had filed his reply, he and his father should be given an opportunity of being heard. He is also willing to pay Rs.10,000/- as cost to the plaintiff. In my opinion, considering that the defendant Nos.2 and 3 have filed the reply and that the order has been made without hearing them and that they are also willing to pay Rs.10,000/-, which is a substantial amount, they should be given an opportunity of being heard. I have also heard learned counsel for plaintiff. In my opinion, following order would meet the ends of justice.

2. Notice of motion is granted in terms of prayer clause (a) as against defendant Nos.2 and 3 only. The Office is directed to place the summons for judgment for hearing only against defendant Nos.2 and 3 in the third week of January 2005. The defendant Nos.2 and 3 are directed to pay as and by way of cost of this motion an amount of Rs.10,000/-. Payment of cost is condition precedent.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary of this Court as true copy.

. Certified copy expedited.